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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Coordination Cases

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MUR 5058

Audit Referral 01-05

Audit Referral 01-06

SENSITIVE

GENERAL COUNSEL'S REPORT

I. DISCUSSION

In this report, the Office of General Counsel recommends summary dismissal of three party coordination matters. The recommendation follows Commission direction at the June 10, 2003, Executive Session in which the Commission rejected (4-2 vote) the recommendation of this Office to find reason to believe in another MUR based on facts and circumstances similar to those presented here. In particular, the four Commissioners who voted against this Office's recommendation indicated that at least one reason for their votes was the perceived unfairness of proceeding against that committee based on allegations of coordination that arose from communications that do not contain express advocacy, when prior recommendations involving similar allegations have failed to garner four votes.

The Commission's direction arose from its consideration of RAD Referral 02L-06, in which the Commission found no reason to believe that the Rhode Island Republican Party and Merrill C. Drew, as treasurer, violated 2 U.S.C. §§ 434(b), 441a(a)(2)(A) and 441a(f), or that Lincoln Chafee for U.S. Senate and William R. Facente, as treasurer ("the Chafee Committee"), violated 2 U.S.C. § 441a(f). The basis of RAD Referral 02L-06 was the Rhode Island Republican Party's failure to adequately

23-04-406-1834

disclose in its 2000 October Quarterly Report \$114,789 in expenditures for advertisements apparently in support of Senator Chafee. The advertisements in question did not contain express advocacy. In that matter, this Office recommended that the Commission find reason to believe that the expenditures in question were coordinated expenditures made on behalf of the Chafee Committee that exceeded contribution limits in violation of 2 U.S.C. §§ 441a(a)(2)(A) and 441a(f), and authorize an investigation into the matter.

At the meeting, the Commission directed that remaining matters in OGC's docket that involved activity that occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002, Public Law 107-155, 116 Stat. 81 (March 27, 2002) ("BCRA") and that involve potential party coordination based on communications that do not contain express advocacy be presented to the Commission for summary dismissal.¹ Accordingly, this Report recommends that the Commission summarily dismiss with no action the remaining party coordination cases from the 1998 and 2000 election cycles that involve communications that do not contain express advocacy.

The matters presented for summary dismissal are (1) MUR 5058 (George W. Bush, Albert Gore, Jr., Bush for President, Inc., Bush-Cheney 2000, Inc., Gore 2000, Inc., Gore-Lieberman, Inc., DNC, RNC), (2) Audit Referral 01-05 (New York State Democratic Party/Schumer '98), and (3) Audit Referral 01-06 (South Carolina Republican Party/Inglis for Senate). As in RAD Referral 02L-06, in each of these matters, party committees allegedly made coordinated expenditures for advertising on behalf of federal candidates that exceeded contribution limits. In general, the evidence of

¹ The Commission promulgated new coordination rules to effectuate BCRA. These rules substantially changed the Commission's prior regulations and provide a "clean slate" for consideration of party coordination cases.

23-04-406-1835

General Counsel's Report
Regarding Coordination Cases

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coordination in these matters is similar to the evidence of coordination presented in RAD Referral 02L-06. Also, similar to RAD Referral 02L-06, the advertisements at issue in MUR 5058 and Audit Referrals 01-05 and 01-06 do not contain express advocacy. Finally, like RAD Referral 02L-06, the activity in these matters occurred prior to the effective date of BCRA.² Brief descriptions of the cases, the complaint and responses in MUR 5058 and Audit Referrals 01-05 and 01-06, as well as scripts of the respective advertisements, are attached for the Commission's review.

II. RECOMMENDATIONS

1. Take no action, close the file as to all respondents and approve the appropriate letters in MUR 5058.

2. Take no action, decline to open a MUR and close the file in Audit Referral 01-05.

3. Take no action, decline to open a MUR and close the file in Audit Referral 01-06.

Date

7/3/13


Lawrence H. Norton
General Counsel


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Attorney

² The Commission's post-BCRA regulations have clarified whether non-express advocacy party coordinated communications are contributions – a controversial issue that resulted in, in some Commissioners' views, inconsistent action in prior matters. See 11 C.F.R. § 109.37. Under section 109.37(a)(2), the content standard for a party coordinated communication may be satisfied even if the communication does not contain express advocacy.

**General Counsel's Report
Regarding Coordination Cases**

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**Tracey L. Ligon
Attorney**

23-04-406-1837

1 MUR: 5058

2 DATE COMPLAINT FILED: July 28, 2000

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4 STATUTE OF LIMITATIONS: June 2005¹

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6 **COMPLAINANT:** Common Cause
7 Democracy 21

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9 **RESPONDENTS:** George W. Bush
10 Albert Gore, Jr.
11 Bush for President, Inc., and David Herndon, as treasurer
12 Bush-Cheney 2000, Inc. and David Herndon, as treasurer
13 Gore 2000, Inc., and Jose Villarreal, as treasurer
14 Gore-Lieberman, Inc., and Jose Villarreal, as treasurer
15 DNC Services Corporation/Democratic National Committee,
16 and Andrew Tobias, as treasurer
17 Republican National Committee, and Alec Poitevint, as treasurer
18

19 **CASE SUMMARY**

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21 The complaint alleged that the DNC and RNC coordinated with Vice President Gore and
22 then-Governor Bush and their committees to spend millions of dollars of "soft" money on
23 television ad campaigns in the guise of party "issue ads" promoting the candidates for the
24 purpose of influencing the presidential election and resulting in in-kind contributions to their
25 campaigns. Complainants allege the ads were "for the purpose of influencing" the presidential
26 election because they were 1) campaign ads designed to promote the candidates; 2) created by
27 members of the campaigns; 3) targeted to run in key presidential battleground states; and 4)
28 indistinguishable from other campaign ads. Complainants further assert that the party
29 committees served as "conduits" for candidate ads that were designed, created, targeted and
30 controlled by the candidate's campaigns. The complaint makes the alternative arguments that
31 the ads were "candidate ads" controlled by the campaign, coordinated between the candidates
32 and the party, or expenditures that promoted candidates, which should have been paid
33 exclusively with "hard" money. The complainants allege knowing and willful violations related
34 to the use of "soft" money to pay for the ads, disclosure problems and exceeding the public
35 financing spending limits. Respondents rely on the 1996 Clinton and Dole audits and
36 enforcement cases and AO 1995-25 as precedents, arguing that coordination between a party and
37 candidate is presumed and that the ads do not contain express advocacy.
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39 **DNC and the Gore Campaign**

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41 The DNC and Gore's campaign apparently shared common media vendors. The same
42 group of partners that formed Gore 2000's media vendor, Century Media, and Gore/Lieberman's
43 media vendor, Campaign Company, Inc., formed a third media vendor, Democratic Victory

¹ The allegations in this matter concern ads that aired between June 2000 and the election in November 2000.

1 2000, Inc. ("DVT"), and all three vendors maintained offices at the same address. According to
2 the Audit staff, some deposits intended for the DVI account were deposited into the Campaign
3 Company account, and individuals working for the three media firms sometimes used the wrong
4 firm's letterhead. In addition, it appears the Gore campaign and the DNC shared a Spanish
5 language media vendor, A. Gutierrez & Associates, Inc. Gore 2000 did not incur any media
6 expenses after March 20, 2000. News stories stated that DNC national chairman Joe Andrew
7 acknowledged he had discussed ads with Gore's campaign chairman and campaign manager and
8 that he had "lots of conversations" about the first ad with Gore aides. One story stated that DNC
9 officials met with top Gore aides to plan a multimillion-dollar ad blitz and planned to meet
10 weekly "to coordinate message and plot strategy." Articles also stated that airing the ads in
11 Midwest states would dovetail with plans for Gore to campaign in those states.

12 RNC and the Bush Campaign

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15 The RNC and the Bush campaign also apparently shared a common media vendor,
16 National Media, Inc. ("NMI"). News coverage links the RNC ads to Alex Castellanos or NMI,
17 and identifies Castellanos as the creator of the first RNC ad and the TV time buyer for Bush's
18 campaign. NMI provided media placement for the 2000 Bush campaign. News stories stated
19 that Bush's media team conferred regularly with the RNC team, and RNC chairman Jim
20 Nicholson reportedly said the RNC had constant communication with the Bush campaign. One
21 story quoted a Republican Congressional aide: "the R.N.C. is now a wholly owned subsidiary of
22 the Bush campaign right now." Other stories said the Bush campaign stopped the RNC from
23 running a "harsh" ad attacking Gore in August and that Bush told an interviewer, "We're not
24 going to be outspent."

25
26 The party committees' ads aired between June 2000 and the general election in many of
27 the same battleground states crucial to the outcome of the upcoming presidential election. The
28 available information indicates that both party committees paid for the ads, at least in part, with
29 "soft" money. The available party ads clearly identify either Gore or Bush or both candidates by
30 references in the script, still pictures or footage, written references and/or the candidate's voice.
31 Some ads attack the opponent's character or record; others contrast the candidates' views or
32 record on campaign issues. Although the ads are generally not identical to ads paid for by the
33 candidates, the issues, attacks and defenses, and positions and plans echo ads paid for by the
34 campaigns (or by the parties as 2 U.S.C. § 441a(d) expenditures) and use similar phrasing.
35 However, none of the available ads contains express advocacy.

6581-904-40-22

1 Audit Referral: 01-05

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3 Expiration of Statute of Limitations:

4 July 30, 2003 – October 28, 2003¹

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6 **RESPONDENTS:** New York State Democratic Party and David Alpert,
7 as Treasurer
8 Schumer '98 and Steven D. Goldenkranz, as Treasurer
9

10 **CASE SUMMARY**

11 Audit Referral 01-05 involves the New York Democratic Party's ("the Committee")
12 disbursements for various types of media that unfavorably portrayed a Republican candidate for
13 the United States Senate in the 1998 election and a Republican office holder. The audit referral
14 raises the possibility that the Committee coordinated its media disbursements with Schumer '98
15 ("the Schumer Committee"); specifically, the referral questions whether the Committee
16 coordinated \$2,729,138 in disbursements with the Schumer Committee for advertisements that
17 did not contain express advocacy.² This amount includes expenditures of: \$644,000 to Morris,
18 Carrick and Guma for mailers that cast the voting record of former Senator D'Amato in a
19 negative light; \$2,055,000 to Media Strategies & Research for the production and placement of
20 television advertisements attacking former Senator D'Amato's positions; and \$30,169 to the
21 Campaign Performance Group for the planning and production of a mailer that accused former
22 Senator D'Amato of voting against children and accused Governor Pataki of attacking public
23 schools. The Committee treated these expenditures as issue advertisements, and allocated the
24 expenditures using the ballot composition ratio of 22% federal and 78% non-federal.
25

26 Based on materials reviewed in the audit, it appears that the Committee and the Schumer
27 Committee shared the same media vendor, Morris, Carrick, and Guma, for the mailers that cast
28 former Senator D'Amato in a negative light and that the Committee and the Schumer Committee
29 shared several employees between August 1998 and December 1998. However, none of the ads
30 contained express advocacy.

¹ The advertisements at issue in this matter ran from July 30, 1998 through October 28, 1998. Therefore, the statute of limitations will expire between July 30, 2003 and October 28, 2003.

² The audit referral notes that the Committee paid the media firm Morris, Carrick, & Guma \$1,575,000 for coordinated party expenditures with the Schumer Committee. These expenditures were for television advertisements that expressly advocated the election of the Democratic nominee for United States Senate, Charles Schumer, and/or the defeat of the Republican nominee, former Senator Al D'Amato. However, these expenditures are not at issue in this referral.

0481-904-40-32

Audit Referral: 01-06

Expiration of Statute of Limitations:
September 1 – October 30, 2003

RESPONDENTS:

South Carolina Republican Party and
John Camp, as Treasurer

Inglis for Senate Committee, Inc. and
Jeffrey J. Parker, as Treasurer

CASE SUMMARY

Audit Referral 01-06 suggests that some media disbursements made by the South Carolina Republican Party ("Party Committee") were coordinated expenditures on behalf of the Inglis for Senate Committee ("Inglis Committee") that exceeded contribution limits. The referral notes that the Party Committee once reported on Schedule F coordinated expenditures totaling \$1,243,564 on behalf of the Inglis Committee for advertisements that were complimentary of Mr. Inglis or critical of Mr. Inglis' opponent; the Party Committee subsequently amended its reports to reflect the media disbursements as allocable expenses rather than coordinated expenditures. In addition, the referral notes that the audit produced no evidence of who paid production costs associated with some of the advertisements, raising the specter that some other entity may have paid the production costs. There is also evidence that the party committee and the Inglis committee used a common media vendor, but no evidence that the party committee gained access to information the candidate provided to that vendor. The advertisements at issue do not contain express advocacy.

23-04-40-32